UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

PARAGON SECURITY SYSTEMS, INC.,

Employer,

and

UNITED GOVERNMENT SECURITY OFFICERS OF AMERICA, INTERNATIONAL UNION [UGSOA] and its Local No. 351,

Case No. 31-RC-126224

Petitioner,

and

INTERNATIONAL UNION, SECURITY, POLICE & FIRE PROFESSIONALS OF AMERICA (SPFPA),

Intervenor/Union.

_____/

SPFPA'S RESPONSE TO UGSOA'S REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S DECISION AND ORDER

I. Introduction

On or about April 9, 2014, the United Government Security Officers of America, International Union (hereinafter UGSOA) filed an RC petition with Region 31 of the National Labor Relations Board (NLRB or the Region) seeking to represent "all full-time and part-time security officers performing security duties for Paragon Systems, Inc., at Air Route Traffic Control Centers with the acronym ARTCC located at 2555 East Avenue P in Palmdale, California." (Transcript page 19). The Region assigned the petition Case No. 31-RC-126224.

The exclusive bargaining representative for the Security Officers described above, the International Union, Security, Police & Fire Professionals of America (SPFPA), filed an intervention asserting an election was prohibited by a successor bar. The Regional Director set a hearing date of April 16, 2014 which was held at Region 31's office located on 115 West Olympic Boulevard, Suite 600 Los Angeles, CA 90064.

Representatives from SPFPA and UGSOA appeared at the hearing; the Employer did not send a representative. The SPFPA introduced the testimony of SPFPA Region 3 Director Michael Hough and entered eight exhibits into evidence. Jeffrey Carlson Miller, Senior Vice President for UGSOA, appeared for the petitioner and testified on its behalf. At the close of the hearing, Hearing Officer Steven R. Alduenda gave the parties leave to file post-hearing briefs by April 23, 2014.

The Regional Director issued a Decision and Order May 1, 2014 dismissing the petition based on a successor bar. UGSOA now asks the Board to review and reverse

the decision of the Regional Director. As no grounds for review exist, the Board should decline to review the Decision and Order.

II. Statement of Facts

SPFPA represents Security Officers working at the ARTCC in Palmdale, California. Prior to October 1, 2013, G4S Government Solutions, Inc. (hereinafter G4S) contracted with the Federal Government to provide security services. Prior to G4S, The Whitestone Group, Inc. (hereinafter Whitestone) held the contract to provide security services. The SPFPA negotiated a collective bargaining agreement (CBA) with Whitestone effective February 1, 2012. G4S succeeded Whitestone in October of 2012. (Tns. p. 21). The SPFPA negotiated a bridge agreement and with some modifications G4S adopted the CBA entered into by Whitestone. However, G4S' tenure was short lived. During the summer of 2013, the government contract was again open for bid. The government awarded the contract to Paragon.

Paragon took over as G4S' successor on October 1, 2013 Paragon hired all of its predecessor's employees. (Tns. 39). Paragon immediately implemented new terms and conditions of employment. (Tns. p. 47). The most significant was assigning what was formerly bargaining unit work to a statutory supervisor. (Tns. p. 38). The unit includes six or seven full-time Security Officers and three or four part-time Security Officers. (Tns. p. 46). Because of the small size of the bargaining unit the economic impact was dramatic. In response, on November 5, 2013, SPFPA filed an unfair labor practice charge docketed as Case No. 31-CA-116522 alleging an 8(a)(5) violation. The charge was eventually withdrawn by the Union and the withdrawal memorialized by

a letter from the Regional Director to Roman Gumul at Paragon dated January 14, 2014. During the pendency of the investigation the parties did not hold bargaining sessions.

After Paragon learned the FAA awarded it the contract for security services at Palmdale it sent employment offer letters to the existing employees. Paragon used that communication to outline some of the terms and conditions of employment that differed from its predecessor. Under G4S, employees could choose to take their hourly health and welfare (H&W) payment in cash. (Tns. p. 45). Under Paragon that would no longer be an option. Instead, employees would participate in an Employer sponsored health insurance plan or Paragon would contribute the employee's H&W allotment to a 401k account. *Id.* Paragon implemented these new terms and conditions of employment upon its assumption of the contract. Hough testified several times that Paragon changed terms and conditions of employment upon taking over at Palmdale. (Tns. pps. 45, 47, 56).

In its communications with SPFPA Local 3 President Dennis Blair, Paragon stated explicitly "[t]o clarify; as this CBA [referring to its' predecessor's agreement with the Union] was between another contractor and the union, we are not are recognizing it at this time, except where required by the Service Contract Act." In fact, the hourly wage and H&W benefits listed in the offer letter were lower than those negotiated between G4S and SPFPA. Blair sent Paragon a copy of that CBA because it also serves as the wage determination under the Service Contract Act (SCA). (Tns. p. 55) (Hough explaining the function of the CBA as a wage

determination). The SCA obligates a successor employer to maintain the level of wages and benefits of its predecessor. 41 U.S.C. § 351 *et seq.*

After withdrawal of the CA charge, the parties scheduled bargaining sessions on March 18th and 19th, 2014. (Tns. p. 46). The parties met on those dates in Los Angeles, California. (Tns. p. 48). During those sessions, the parties bargained on non-economic provisions of a CBA proposed by Paragon. (Tns. p. 49). At the conclusion of the two days, the parties agreed on a majority of the non-economic provisions. *Id.* The agenda of the next bargaining session will include economic terms of the CBA. Additionally, the parties are still bargaining over several complex issues including use of supervisors for bargaining unit work, government supremacy, discharge and discipline, management's rights, and strike and walk outs. (Tns. p. 51). Hough explained that Paragon can "be a bit difficult to communicate with at times." *Id.* Nevertheless, the parties are approximately half finished with CBA negotiations and have not reached impasse on any issues. (Tns. p. 53).

Paragon hired G4S's workforce but refused to adopt the existing CBA and implemented new terms and conditions of employment without bargaining with the SPFPA. The most significant change included using a supervisor for bargaining unit work. While Paragon is a successor employer by virtue of the substantial continuity of operations it is not a "perfectly clear successor" as the Petitioner suggested at the hearing. Paragon's initial communication announced new terms and conditions of employment. In particular, Paragon indicated that H&W would go to purchase health insurance or into a 401k. At the outset Paragon indicated that it intended to retain

the employees based on changed terms and conditions. Announcement of a change to benefits is sufficient to defeat a "perfectly clear successor" claim. *Planned Bldg. Servs., Inc.*, 318 NLRB 1049 (1995). In *Planned Bldg. Servs. Inc.* the Board held that the Employer's announcement that it would not maintain the same benefits as its predecessor precluded a finding that it was a "perfectly clear successor". Paragon's announcement in its initial offer letter similarly precludes it from being a "perfectly clear successor".

III. Discussion

UGSOA argues that the Regional Director erred by finding the first bargaining session between SPFPA and Paragon occurred March 18, 2014. UGSOA argues that bargaining began when Paragon sent an offer of employment letter to its predecessor's employees or when the Local President informed the Company of the correct rate of wages and benefits protected by the Service Contract Act.

The Board reviews a decision of the Regional Director when it departs from Board precedent or where the Regional Director made clearly erroneous finding of facts that prejudiced a party. NLRB Rule 102.67. The Regional Director's Decision falls into neither category.

In an attempt to move the beginning of the successor bar backwards, the UGSOA argues that the bar began to run in July, three months before Paragon took over as the contractor. In making this assertion the UGSOA does not cite to the record or refer to any Board decision. In July, Paragon sent a letter to G4S' employees with an offer of employment that outlined the terms and conditions thereof. In October of

2013, the Local President attempted to file a grievance regarding Paragon's use of a supervisor to perform bargaining unit work.[1] Neither situation constitutes bargaining for a contract.

In *UGL-Unicco Service Co.*, the Board explained two different situations of successorship. The first, where the successor adopts the existing terms and conditions of employment the presumptive reasonable period of bargaining is six months. *UGL-Unicco Service Co.*, 357 NLRB at *12. Where a successor employer recognizes the Union but establishes new terms and conditions of employment a reasonable period of bargaining is between six months and one year. *Id.* at *13. In both situations time is measured from "the date of the first bargaining meeting between the union and the successor employer." *Id.* at *12. The Regional Director's Decision and Order followed the Board's guidance. Citing to *UGL-Unicco Service Co.*, the Regional Director held that the first bargaining session was in March. The Regional Director considered and rejected UGSOA's claims that bargaining began earlier. UGSOA does not have the factual support or a legal argument that suggests otherwise. As such, there is no legal error or erroneous and prejudicial finding of fact by the Regional Director that would afford the Petitioner a right to review by the Board under Rule 102.67.

[1] There was no grievance and arbitration machinery available because the parties lack a contract that provided for such a process. SPFPA subsequently filed an unfair labor practice charge with the Board.

IV. Conclusion

For the reasons stated above the Petitioner has not demonstrated that it is entitled to review by the Board. Accordingly, SPFPA respectfully requests that the Board deny UGSOA's request for review.

Respectfully submitted,

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Proof of Service

I hereby certify that on May 22, 2014, I filed the Brief above electronically with the NLRB's efiling system. The other parties to the proceeding were served by electronic mail at the addresses below.

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Respectfully submitted,

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